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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

UY KIM KEE,
Petitioner,

-versus- C.T.A. CASE No. 1107

HON. ELEUTERIO CAPAPAS,
as Commissioner of
Customs,
Respondent.
x- - - - - - - - - - - - -x

April 17/64

D E C I S I O N

From a decision of the Commissioner of Customs dated April 17, 1961, affirming that of the Acting Collector of Customs of Manila dated January 20, 1961, in Customs Case No. 458 (S.I. No. 6070) decreeing the forfeiture of 53 bales of rayon remnants, for violation of Central Bank Circular No. 44 in relation to Section 2530(f) of the Tariff and Customs Code, petitioner has appealed to this Court.

This case was submitted for decision solely on the basis of the pleadings and records of the administrative proceedings in the Bureau of Customs.

The stipulated facts appearing of record (pp. 63-67, Customs Records) show:

> "1. That KIM KEE SHIRT FACTORY is the importer of record of the merchandise involved;
>
> "2. That pursuant to, and by virtue of, an existing and available foreign exchange allocation from claimant's first quarter dollar allocation for 1960, and to a letter of credit, No. M-7622, of the Prudential Bank & Trust Co., Inc., authorized agent of the Central Bank of the Philippines, the latter bank issued Release

Certificate No. 30971, dated May 27, 1960, after the arrival of the merchandise covered thereby, corresponding to 53 bales of rayon remnants, consigned to the KIM KEE SHIRT FACTORY and valued at $3,380.00 C&F, and entered in the Port of Manila under Import Entry No. 042999, current series;

"3. That upon the filing of the aforementioned entry, the importer deposited ₱2,636.00 representing estimated duties and taxes on the said merchandise;

"4. That Mr. Timoteo Y. Aseron, who was then Acting Commissioner of Customs, withheld the release of the merchandise, on or about June 4, 1960;

"5. That the exclusive basis of the aforementioned action of the said officials is the request of Senator Alejandro A. Almendras, to the Commissioner of Customs, which is embodied in his letter, dated June 3, 1960, to withhold delivery of said merchandise on the ground that LIM KEE SHIRT FACTORY is a subject of committee inquiry; that a true copy of the letter of Senator Almendras is hereto attached as Annex 'A' of this Partial Stipulation of Facts and made an integral part thereof;

"6. That there is nothing on the record to show that the aforementioned allegations in Annex 'A' were established as facts;

"7. That on June 7, 1960, Mr. Timoteo Y. Aseron sent a letter to Senator Almendras stating that the Bureau of Customs withheld the merchandise pursuant to the request of the said Senator, a true copy of which is hereto attached as Annex 'B' and made an integral part of this Partial Stipulation of Facts;

"8. That in two letters, dated August 23 and 29, 1960, addressed to the said customs officials, the petition (sic), through counsel, demanding that the merchandise involved be released, inasmuch as the corresponding import papers are all in order, therefore, there are no legal obstacles for the release of the same; that true copies of these letters are attached hereto as Annexes 'C' and 'D', respectively, and made integral parts of this Partial Stipulation of Facts;

"9. That thereafter, the Commissioner of Customs even directed the examination of each and every package of the shipment;

"10. That in a letter, dated August 23, 1960, a true copy of which is attached hereto as Annex 'E' and made an integral part of this Partial Stipulation of Facts, the Commissioner of Customs advised Senator Almendras of the circumstances of the case;

"11. That on August 26, 1960, Senator A. Almendras replied to the letter of the Commissioner of Customs mentioned in the next preceding paragraph, stating therein that the Senate Committee of Commerce and Industry is convinced that the UY KIM KEE SHIRT FACTORY has violated Central Bank and importation laws; that a true copy of this letter is hereto attached as Annex 'F' and made an integral part of this Partial Stipulation of Facts;

"12. That in view of the above and of the representations made by the undersigned counsel, the Commissioner of Customs requested the latter for a few days within which to take up the case with the Secretary of Finance, to which the undersigned counsel acquiesced;

"13. That on August 29, 1960, the Commissioner of Customs addressed a letter to the Honorable, the Secretary of Finance, Manila, informing the latter of the facts that had thus far transpired and sought instructions as to the disposition of the merchandise; that a true copy of the said letter is attached hereto as Annex 'G' and made an integral part of this Partial Stipulation of Facts;

"14. That the undersigned counsel learned is that the Special Assistant to the Governor of the Central Bank, through respondent Mr. A. G. Mañgilit, directed the Prudential Bank & Trust Co., to withdraw the Release Certificate covering the merchandise, on the ground that the ground that the Central Bank has verified reports that UY KIM KEE ceased operation during 1960; that a true copy of this letter is attached hereto as Annex 'H' and made an integral part of this Partial Stipulation of Facts;

"15. That pursuant to this request, the Prudential Bank & Trust Co., through its Assistant Vice-President F. R. Arcenal, recalled the Release Certificate covering the merchandise, as evidenced by the true copy of the letter dated September 6, 1960, recalling the Release Certificate, which is attached hereto as Annex 'I' and made an integral part of this Partial Stipulation of Facts;

"16. That in a letter addressed to the Secretary of Finance, dated September 8, 1960, Carlos S. David, acting for the undersigned counsel, requested that action on the release of the merchandise be taken; a true copy of which letter is attached hereto as Annex 'J' and made an integral part of this Partial Stipulation of Facts;

"17. That on the same date, September 8, 1960, the Commissioner of Customs, Mr. Eleuterio Capapas wrote a letter to the Collector of Customs, Port of Manila stating that the merchandise is subject to seizure under customs laws in view of the recall of the release certificate; copy of this letter is hereto attached as Annex 'K' and made an integral part of this Partial Stipulation of Facts;

"18. That on September 13, 1960, the Commissioner of Customs Eleuterio Capapas wrote a letter to the undersigned counsel, replying to the latter's letter, dated August 29, 1960, advising that as a result of the recall by the agent bank of Release Certificate No. 30971, the merchandise was left without proper bank release certificate, as a result of which he directed the Collector of Customs of Manila to subject the importation in question to seizure proceedings in accordance with law, a true copy of which is attached hereto as Annex 'L' and made an integral part of this Partial Stipulation of Facts;

"19. That thereafter, the merchandise were seized by the Acting Collector of Customs, Seizure Identification No. 6070;

"20. That the parties hereby reserve their rights to present evidence which they may decide to submit during the hearing of this case."

The only issue raised is whether or not Central Bank Circular No. 44 upon which the forfeiture of the 53 bales of rayon remnants was based was repealed by Central Bank Circular No. 133, so that all liabilities, civil and criminal, incurred thereunder are deemed abated.

The issue is not of first impression. In previous cases admitted by the petitioner to be on all fours with this case (Andres E. Lazaro vs. Commissioner of Customs, G.R. Nos. L-21790 and L-21794, December 24, 1965), the Supreme Court, affirming the decision of this Court, held:

"The issue of whether or not the importations in question are subject to forfeiture for lack of a Central Bank release certificate in violation of Central Bank Circulars 44 and 45 in relation to Section 1363(f) of the Revised Administrative Code has already been answered in the affirmative in previous cases involving similar facts.[1] We see no cogent reason to alter our previous rulings.

"Central Bank Circular 133 did not repeal Circulars 44 and 45 with respect to the necessity of a release certificate. As a matter of fact, paragraph 6 of Circular 133 required imports to be released only upon presentation of a release certificate issued by the Central Bank. Not only that, Section 14 of Circular 44 which states:

> '14. No item of import shall be released by the Bureau of Customs without the presentation of a release certificate issued by the Central Bank or any authorized Agent Bank in a form prescribed by the Monetary Board.'

was deemed incorporated to Circular 133 by virtue of paragraph 8 thereof which we quote hereunder:[2]

> '8. All existing circulars, rules, regulations, and conditions governing transactions in foreign exchange not inconsistent with the provisions of this Circular, are deemed incorporated hereto and made integral parts hereof by reference.'

"With respect to the assertion that the enactment of Republic Act 1410 abated any liability incurred for violation of Central Bank Circular 45, suffice it to say that the importations in question do not come within the operation of said Act, for Section 3 thereof says:

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[1] Serree Investment Company v. Commissioner of Customs, L-21217, November 29, 1965 and cases cited therein.

[2] Bombay Department Store v. Commissioner of Customs, L-20489, June 22, 1965; Bombay Department Store v. Commissioner of Customs, L-20460, September 30, 1965.

> 'SEC. 3. x x x Provided, however, That goods and commodities in transit or previously imported on a no-dollar remittance basis at the time of the approval of this Act shall not be affected by the operation of this Act.' (Underscoring supplied)

Said goods had already been imported and declared forfeited by the Collector of Customs of Manila when Republic Act 1410 was enacted on September 10, 1955."

IN VIEW OF THE FOREGOING, the decision appealed from is hereby affirmed, with costs against petitioner.

SO ORDERED.

Quezon City, April 12, 1966.

R M Umali
ROMAN M. UMALI
Acting Presiding Judge

I CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge